THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.14688 of 1999

Dated : 25.06.2007

Between:

Orusu Ramulu S/o Gattaiah and others.

… **PETITIONERS**

And:

Government of A.P., rep., by its Principal Secretary,
Revenue Department, Secretariat, Hyderabad and others.

….**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.14688 of 1999

ORDER:

Petitioners are statedly legal heirs of one Orusu Gattaiah. An extent of Acs.2.31 guntas in Sy.No.142/10 of Kothagudem village was in possession of Orusu Gattaiah and an extent of Acs.2.15 cents in Sy.No.142/11 of Kothagudem village was in possession of the third petitioner. Originally, Markumchand Agraharik leased out the entire extent of land in the said survey numbers to Orusu Gattaiah in 1338 Fasli, and subsequently, after the marriage of the third petitioner he gave an extent of Acs.2.15 cents of land in Sy.No.142/11 to the third petitioner and he was in possession of the land in Sy.No.142/10. While so, the then Tahsildar, Kothagudam, initiated proceedings under Sections 6 and 7 of the Andhra Pradesh Land Encroachment Act 1905 (for short "the Act") against the said Gattaiah and the third petitioner. After holding due enquiry, the then Tahsildar, by order dated 20.12.1983, held that encroachment by the third petitioner was not

admissible and thereby ordered for eviction of the land in her possession, leaving an extent of Ac.0.08 guntas, and insofar as the land in possession of Gattaiah is concerned, considering his long standing possession, the Tahsildar held that he shall not be evicted from the said land. Subsequently, after transfer of the Tahsildar who passed the said order, his successor filed an appeal under Section 10 of the Act against the order of the then Tahsildar, dated 20.12.1983, before the Revenue Divisional Officer, Kothagudem, being C.M.A.No.20 of 1984, and the same was allowed. Aggrieved thereby, Gattaiah and the third petitioner filed W.P.No.1611 of 1985, which was eventually allowed on 10.07.1987, and no appeal was preferred against the same and it has become final. Be that as it is, the second respondent, after lapse of sixteen years, initiated suo motu proceedings and passed the impugned order dated 30.06.1999, setting aside the order of the then Tahsildar, dated 20.12.1983, and consequently directed the authorities concerned to take possession of the land in question from the petitioners. Aggrieved thereby, this writ petition is filed.

Detailed counter-affidavits have been filed by respondents 2 and 4. It is stated in the counter-affidavits that the Government sanctioned Urban Permanent Housing Scheme (Scheme) at Kothagudem village for providing house sites to the weaker sections, that an extent of Acs.31.36 guntas of land in Kothagudem village was found to have been encroached by seventeen persons, including petitioners, that the fourth respondent initiated proceedings under the Act and ordered for eviction of the third petitioner to an extent of Ac.2.15 guntas leaving Ac.0.08 guntas, and that Gattaiah was continued to hold the land in his possession, keeping in view his long standing possession. It is further stated that in Appeal, the Revenue Divisional Officer, Kothagudem, ordered for eviction of the entire land in possession of the petitioners and Gattaiah, however, permitted to retain four plots, against which the

third petitioner and Gattaiah filed W.P.No.1611 of 1985 and the same was allowed. It is also stated that as per the observations made by this Court in W.P.No.1611 of 1985, the second respondent has taken up suo motu enquiry in the matter, that during the course of enquiry, petitioners produced a Xerox copy of sale deed dated 24.08.1947 in order to establish that the then Agraharik of Kothagudem had granted permanent kowl to the said Gattaiah to an extent of Acs.5.00 in Sy.No.118 of Kothagudem for cultivation on payment of 100 osmania sikkas, but there were corrections with regard to extent and date of document and no witness has attested the said document, and therefore, the second respondent held that it is a fabricated document and cannot be relied upon. It is also stated that as possession of the land was already taken and given to the beneficiaries under the Scheme, who in turn also constructed houses, the second respondent held that petitioners herein are not entitled to hold the land in question. Therefore, it is concluded that there is no illegality in the impugned order warranting interference by this Court.

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue.

Having perused the order impugned in this writ petition, *prima facie,* this Court is of the view that the second respondent is justified in holding that the petitioners have no right, whatsoever, over the land in question. It appears that the name of Gattaiah was recorded as cultivator in an extent of Acs.5.00, but the said entry was found to be in different ink with different handwriting. Therefore, the second respondent came to the conclusion that the said entries are fabricated in the revenue records to establish the possession of the said Gattaiah. Further, the second respondent observed that petitioners tried to establish their possession by producing the Kowl deed, but the said kowl deed relates to Sy.No.118, whereas the survey number for the land in question is 142. Apart from these, it was also held by the

second respondent that the said Gattaiah was in sound financial possession, and as such he was not entitled for assignment of any land.

Further, this Court, while issuing rule nisi, ordered status quo to be maintained by both the parties. Thereafter, on an application filed to vacate the said interim order, it was modified to the extent that the persons, who were in possession of the lands in question at the time of granting order of status quo, shall continue to be in possession of the same. A perusal of record shows that even by the time the writ petition was filed, possession of the lands in question was taken and given to beneficiaries under the scheme and some of the beneficiaries have made constructions in their respective plots. Hence, this Court is of the view that the writ petition deserves no consideration.

Accordingly, the writ petition is dismissed. There shall be no order as to costs.

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25.06.2007

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